(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

CIVIL APPLICATION NO.88 OF 2004
IN FIRST APPEAL NO. 72 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S. G. Bhobe with Shri S. V. Kudchadkar, advocates for the applicant.

Shri Sanjay Kher with Shri M. S. Joshi, advocates for respondent no.1.

CORAM : S. A. BOBDE, J.

DATE : 18th June, 2004

P.C.:

The First Appeal by the original appellant has been admitted against the judgment and Order of the District Judge for dismissal of the suit seeking to restrain the respondents from using the song "Chandneache Ratti". The learned counsel for the applicant strongly urged for grant of injunction pending the appeal on the ground that such an injunction operated while the suit was pending.

The learned counsel for the

respondents has pointed out, and in my view rightly, that the trial court has, after hearing the evidence, come to a clear finding that the plaintiff has miserably failed to prove that he is the owner of the copyright in the musical work of the suit song and the right now vests in the respondents. Indeed there is such a finding recorded in paragraph 48 of the judgment of the trial Court. The trial Court has further found in conclusion that the plaintiff was not the author of the tune or musical work in the suit song and that he has failed to prove that he is the owner of the same. The trial Court has also found that the tune was available in public domain and it is the respondent HMV with the assistance of some other party who provided the musical arrangement and reduced the same in material form

In this view of the matter, I am not inclined to grant the

injunction prayed for. Prayer for injunction is hereby rejected. Hearing of the Appeal is expedited.

Application disposed of.

S. A. BOBDE, J.

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